

ARKANSAS PUBLIC SERVICE COMMISSION



COMMISSION RULES AND REGULATIONS GOVERNING PROMOTIONAL PRACTICES OF ELECTRIC AND GAS PUBLIC UTILITIES

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(Effective May 8, 1992, by Order No. 13)

(Clarified and Amended July 2, 1992, by Order No. 14)

(Clarified and Amended January 25, 1994, by Order No. 19)

Section 1. Declaration of Public Policy

In light of events which have occurred subsequent to the issuance of the 1971 Rules and Regulations Governing Promotional Practices of Electric and Gas Public Utilities (1971 Rules), competition among electric and gas utilities must now exist in an era of energy conservation and integrated resource planning. As these utilities seek to maximize the use of existing generating plants and reserves, to use wisely the natural resources that provide their fuel, and, thus, to encourage their customers to conserve energy where possible, the Commission has determined that promotional practices must benefit ratepayers in the aggregate or not be engaged in at all.

The promotion of goods or services offered the public is an inherent and important part of the economy of the State and Nation. However, any electric and gas utilities desiring to engage in promotional practices have the burden of proving that the proposed practices are not unduly discriminatory or anticompetitive, and are in the public interest because they serve the purposes of energy conservation pursuant to the authority granted the Commission in the Energy Conservation Endorsement Act of 1977, Ark. Code Ann. §23-3-401 et seq. The laws of this State require the rates of a public utility to be just and reasonable and in conformity with the rules, regulations and orders of the Commission. The laws prohibit a public utility from, directly or indirectly, demanding or receiving from anyone a greater or lesser rate for service than that specified in its tariff. The laws prohibit, with respect to rates and services, the granting of unreasonable preferences or advantages to anyone, or subjecting anyone to unreasonable prejudice or disadvantage. The laws grant the Commission the authority to encourage energy conservation. Accordingly, the Commission declares that the adoption and enforcement of these revised Rules and Regulations are in the public interest because they seek to advance the welfare of all consumers by prohibiting all promotional practices unless approval by the Commission has been granted after investigation and hearing.

Section 2. Definitions

The following words, when used in these Rules and Regulations, shall have the following meanings, unless otherwise clearly apparent from the context.

- (a) The words "appliance or equipment" shall mean any device, including a fixture, which consumes electric or gas energy and any ancillary device required for its operation, including computer hardware and software.
- (b) The word "consideration" shall mean any cash, donation, gift, allowance, rebate, bonus, merchandise (new or used), property (tangible or intangible), labor, service, conveyance, commitment, right, or other thing of value.
- (c) The word "financing" shall include acquisition of equity or debt interests, loans, guarantee of loans, advances, sale and repurchase agreements, sale and leaseback agreements, sales on open account, conditional or installment sales contracts, or other investments or extensions of credit.
- (d) The word "person" shall include any individual, group, firm, partnership, corporation, cooperative, association, or other organization.
- (e) The words "public utility" or "utility" shall mean any person engaged in the production, storage, distribution, sale, delivery or furnishing of electricity or gas subject to the jurisdiction of the Commission.
- (f) The word "Tests" shall mean the Participant Test, the Ratepayer Impact Measure Test, the Total Resource Cost Test, the Utility Cost Test as summarized in the Appendix to these Rules and Regulations.
- (g) The words "promotional practices" shall mean any consideration offered by a public utility to any person for the purpose, express or implied, of inducing such person to select or use the service or additional service or to conserve the use of service of such or any utility, or to select or install any appliance or equipment designed to use such or any utility service;
provided:
 - (1) That the words "promotional practices" shall include, but not be limited to, the following activities of a public utility:
 - (A) Merchandising of appliances or equipment unless such activity is operated as a non-utility business as provided at Section

2(g)(2)(A). Merchandising activities that are not completely segregated from public utility activities and property shall be deemed promotional practices;

- (B) The financing of the acquisition of any appliance or equipment, unless such activity is operated as a non-utility business as provided at Section 2(g)2(A), at a rate of interest or on terms significantly more favorable than those generally applicable to sales by non-utility dealers in such appliances or equipment;
 - (C) The financing of land or the construction of any building when same is not owned or otherwise possessed by the utility;
 - (D) The furnishing of consideration to any person for work done or to be done on property not owned or otherwise possessed by the utility;
 - (E) The acquisition from any person of any tangible or intangible property or service for a consideration in excess of the value thereof, or the furnishing to any person of any tangible or intangible property or service for a consideration of less than the value thereof;
 - (F) The furnishing of consideration to any person for the sale, installation or use of appliances or equipment;
 - (G) The guaranteeing of the maximum cost of electric or gas utility service;
 - (H) The furnishing of distribution and service facilities to any area or customer under terms and conditions different from those applicable to any other area or customer receiving the particular class of service involved; and
 - (I) The furnishing of consideration by a utility to any person who, on behalf of the utility, performs any promotional practice as otherwise defined in this section.
 - (J) Special rate contracts between a utility and an individual customer.
- (2) That the words "promotional practices" shall not include the following activities of a public utility:

- (A) Merchandising or financing of appliances or equipment if such activity is operated as a non-utility business, i.e. the activities must be completely segregated from public utility activities and must meet the following requirements:
 - (1) Accounting for the activities is completely separate;
 - (2) Collection for financing is not made on the customer's utility bill;
 - (3) Utility payment records are not used for credit approval;
 - (4) Public utility property or activities, such as billing inserts, are not used to advertise the non-public utility activities;
- (B) Inspections, repairs, and service for the purpose of providing or restoring utility service or to prevent hazardous conditions or service interruptions to a customer;
- (C) Providing appliances or equipment incidental to exhibitions, demonstrations, tests, or experiments of a reasonable duration;
- (D) Providing appliances, equipment, or instructional services to an educational institution for the purpose of instructing students in the use or repair of such appliances or equipment; and
- (E) Technical, informational, or educational assistance offered to persons on the use of energy furnished by a public utility or on the use or maintenance of appliances or equipment.
- (F) Rates reflecting variations in the utility's actual cost of providing service including, but not limited to, time-of-use, summer/winter differential, and interruptible or curtailable rates.

Section 3. Prohibition of Promotional Practices

A public utility shall not, without first obtaining the approval of the Commission, engage in any promotional practices. Any public utility engaging in promotional practices after the effective date of these Rules and

Regulations without approval of such practices by the Commission will be subject to penalty under Ark. Code Ann. §23-1-103, except as allowed under Section 9 of these Rules and Regulations.

Section 4. Standards Governing Promotional Practices

The following standards shall govern the utility's promotional practices:

- (a) A promotional practice must be in the public interest. In determining whether a practice is in the public interest, the Commission shall consider the following:
 - (1) Cost efficiency of the proposed promotional practice using the Total Resource Cost Test, Participant Test, and Utility Cost Test; and
 - (2) Ratepayer impact of the proposed promotional practices using the Ratepayer Impact Measure Test.
- (b) No public utility shall, directly or indirectly, in any manner or by any device whatsoever, offer to any person any form of promotional practice except such as is uniformly and contemporaneously extended to all persons in a reasonably defined class. No public utility shall, in the offering of a promotional practice, give any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference in the offering of promotional practices either as between localities or as between classes to whom promotional practices are offered. No public utility shall classify the persons to whom its promotional practices are offered except to the extent permitted by the laws of this State.
- (c) All advertising associated with a promotional practice shall be truthful and not misleading or deceptive.

Section 5. Filing of Proposed Promotional Practices

After the effective date of these Rules and Regulations, any utility wishing to engage in any promotional practice must file an application for approval by the Commission. All applications for approval of a promotional practice shall be assigned a "P" docket designation by the Secretary of the Commission. Any application filed pursuant to these Rules and Regulations shall also be governed by the Commission's Rules of Practice and Procedure.

Upon application of the utility, the Commission shall conduct an investigation of the proposed promotional practice and make a determination whether it is in the public interest. The application shall include a schedule for each proposed promotional practice setting forth:

- (a) the name, number or letter designation of each promotional practice;
- (b) the class of persons to which the promotional practice is being offered;
- (c) whether the promotional practice is being uniformly offered to the persons within a class;
- (d) a description of the promotional practice which shall include a statement of the terms and conditions governing same;
- (e) a description of the advertising or publicity employed with respect to the utility's promotional practice, and the proposed methodology for accounting for these costs;
- (f) if the promotional practice is offered, in whole or in part, by some other person, the identity of such person and the nature of such person's participation;
- (g) the objectives of the promotional practice;
- (h) the expected beginning and ending dates of the promotional practice;
- (i) an estimate of the number of persons who are potential participants in the promotional practice;
- (j) the proposed accounting for the costs and benefits of the promotional practice;
- (k) sufficiently detailed calculations, sensitivity analysis, and supporting testimony of the effect of the promotional practice using each of the applicable Tests, as determined by the California Standard Practice Manual, Economic Analysis of Demand-Side Management Program, and an explanation of why any particular test is not applicable to the proposed promotional practice;
- (l) a description of the relevant competing energy resources in the service area where the promotional practice will be offered, and the extent to which they are considered in the calculations in the Tests; and
- (m) any other information relevant to a complete understanding of the promotional practice.

Section 6. Approval by the Commission

A proposed promotional practice filed pursuant to these Rules and Regulations may be implemented by the applicant thirty (30) days after the date of filing unless the Commission, upon its own motion or the motion of any party, issues an order suspending the implementation of the proposed promotional practice pending further investigation. However, the suspension shall not be for a longer period than one hundred fifty (150) days beyond the time when the proposed promotional practice would otherwise go into effect. Any order initially suspending a proposed promotional practice shall set an appropriate procedural schedule and a specific date for the commencement of a public hearing inquiring into the proposed promotional practice unless waived by the applicant.

Section 7. Notices

The Secretary of the Commission shall establish a promotional practices reporting docket which shall serve as a repository for all notices filed pursuant to Section 7 and biennial reports filed pursuant to Section 8 of these Rules and Regulations. Said promotional practices reporting docket shall be designated by the Secretary of the Commission as a "PR" docket.

After a promotional practice has been approved by the Commission, the utility engaging in the practice shall file a notice in the promotional practices reporting docket, referencing the docket in which the promotional practice was approved, whenever any of the following events occur:

- (a) commencement of the practice;
- (b) material variance in the number of participants, or the cost or benefits of the practice that alters the results of the Tests, presented in the utility's application; and
- (c) cancellation of the practice.

Section 8. Biennial Report

After approval by the Commission of any public utility's promotional practices, each public utility engaging in approved promotional practices shall file with the Commission every two years beginning June 30, 1994, in the promotional practices reporting docket, a report of the promotional practices offered by such public utility during the period covered by such report. The report shall include a certificate signed by an officer of the utility that contains

the following information for its approved promotional practices:

- (a) the promotional practices currently engaged in, referencing the docket in which each specific promotional practice was approved;
- (b) the number of customers participating in each promotional practice by class;
- (c) any promotional practices terminated since the last report and an explanation of why they were terminated;
- (d) total expenditures incurred by the utility for each promotional practice, by category (e.g., general and administrative, sales, plant, etc.);
- (e) analyses of each promotional practice incorporating the most current data in the relevant Tests;
- (f) a description of the advertising or publicity employed with respect to the utility's promotional practices;
- (g) an attestation of compliance with these Rules and Regulations; and
- (h) an attestation that all of the utility's promotional practices are on file with the Commission.

Section 9. Transition Period

Pursuant to Section 3 of these Rules and Regulations, all promotional practices of electric and gas utilities are prohibited unless approval has been granted by the Commission. In order to provide an orderly transition from the 1971 Rules to these Rules and Regulations, the Commission hereby establishes a transition period for the filing and approval of (a) promotional practices currently engaged in by a utility that are not defined as a promotional practice in the 1971 Rules and (b) tariffs and other programs approved by the Commission before May 8, 1992, which meet the definition of promotional practices embodied herein. Such promotional practices must be filed in accordance with Section 5 at least 180 days before the end of the transition period. The transition period will expire January 25, 1995. By the end of the transition period, any utility wishing to continue such practices must have secured Commission approval for such practices pursuant to these Rules and Regulations or cease such practices.

Notwithstanding any provision of these Rules and Regulations, a public utility may perform lawful commitments concerning promotional practices entered into prior to the effective

date of these Rules and Regulations, or entered into pursuant to a tariff which was approved prior to the effective date of these Rules and Regulations, if a detailed description of such commitments is filed with the Commission by January 25, 1995, describing the nature of each commitment and the reasons for which the commitment has been incurred; provided that (a) such a commitment may be hereafter terminated by the Commission after notice, opportunity for hearing, and for good cause shown and (b) such a commitment is not prohibited by the 1971 Rules. Any determination by the Commission allowing these lawful commitments to be honored by a public utility shall not constitute approval of the promotional practice. Commission approval of any such promotional practice must be sought pursuant to the provisions of these Rules and Regulations.

Section 10. Effective Date

These Rules and Regulations, promulgated in Arkansas Public Service Commission Docket 90-205-R by Order No. 13 entered May 8, 1992, as clarified and amended by Order No. 14 entered July 2, 1992, and Order No. 19 entered January 25, 1994, shall supersede the 1971 Rules and are to be effective on and after May 8, 1992. These Rules shall be kept on file and made available to the public in the office of the Secretary of the Commission.